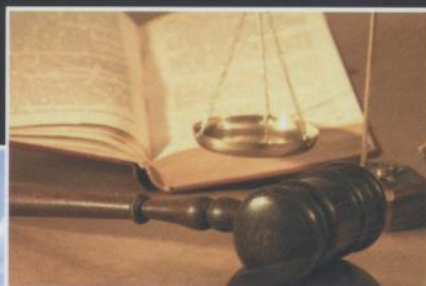
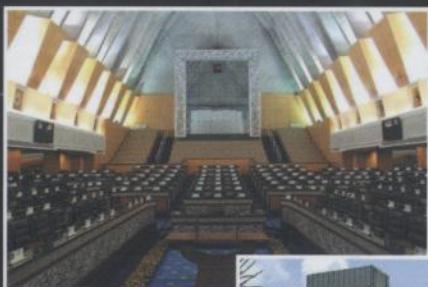


# Constitutional Law and Human Rights in Malaysia

Topical Issues and Perspectives

Editor

Khairil Azmin Mokhtar



SWEET & MAXWELL ASIA

# Constitutional Law and Human Rights in Malaysia

Topical Issues and Perspectives

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## Chapter One

# The Doctrine of Separation of Powers: Judicial Review as a Check and Balance Tool

*Khairil Azmin Mokhtar and Siti Aliza binti Alias*

### 1.1 INTRODUCTION

The Federation of Malaya Constitutional Commission or the Reid Commission in its report (Reid Report), which later became the basis of the Federation of Malaya Constitution 1957 and later known as the Malaysian Constitution 1963, stated that:

A Federal constitution defines and guarantees the rights of the Federation and the States: it is usual and in our opinion right that it should also define and guarantee certain fundamental rights which are generally regarded as essential conditions for a free and democratic way of life ... The guarantee afforded by the Constitution is the supremacy of the law and the power and duty of the courts to enforce these rights and to annul any attempt to subvert any of them whether by legislative or administrative action or otherwise. (Emphasis added.)<sup>1</sup>

The significance of the power of the court to review legislation made by the legislature and the action and decision of the executive is very obvious from the above recommendation. It is crucial for a federal democracy to have an independent and powerful judiciary to protect the rights of the people, the states and the federation. Otherwise the country would be a country with a constitution but devoid of constitutionalism.

### 1.2 CONSTITUTIONALISM, RULE OF LAW AND JUDICIAL REVIEW

The term "constitutionalism" may be described as the concept of limited government, whereupon the powers of the different wings of government are defined and the rights of the governed, enshrined.

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<sup>1</sup> Report of the Federation of Malaya Constitutional Commission 1957, Food and Agriculture Organisation of the United Nations, Rome (Kuala Lumpur: Government Printer, 1957), p 70.